



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 550

IN THE MATTER  
OF  
ROBERT CATALDO

## DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Robert Cataldo ("Cataldo") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 27, 1996, the Commission voted to find reasonable cause to believe that Cataldo violated G.L. c. 268A, §3(a).

The Commission and Cataldo now agree to the following findings of fact and conclusions of law:

1. During the period here relevant, Cataldo was a Massachusetts business consultant.
2. In 1991-1992, Abraham Gosman ("Gosman") was the controlling shareholder, a member of the board of directors and chief executive officer of the Mediplex Group, Inc. ("Mediplex"), a company that operates nursing homes and other medical treatment facilities in Massachusetts and elsewhere. Mediplex's business is regulated by the Commonwealth of Massachusetts, and Mediplex was subject to the acts of the Massachusetts State Legislature ("Legislature"), at the times here relevant.
3. During the period here relevant, Gosman was also personally involved in real estate development projects in Massachusetts. During 1992, Gosman attempted to purchase and renovate the former Sears Building in the Fenway area of Boston. Gosman planned to convert the Sears Building into a multi-use medical building and rent space to nearby hospitals. The Sears Building project had an estimated cost of more than \$120 million. Gosman withdrew from the Sears Building project in late 1992 and it was not completed.
4. To complete the Sears Building project, Gosman required a variety of favorable actions from federal, state and municipal agencies. Gosman needed approvals and permits from Boston, state and federal agencies for issues relating to the environment, regulation of health care facilities, transportation, zoning and taxes. Gosman also considered financing the project with bonds issued by the Massachusetts Industrial Finance Agency.
5. During 1991 and 1992, the Legislature considered a variety of bills that affected Gosman's business interests. On a continuing basis, the Legislature acted on general legislation that affected the rates, taxes, worker's compensation obligations and insurance eligibility of health care facilities in the Commonwealth, including but not limited to Mediplex's facilities. In addition, in 1992, legislation pending before the House ("The Rivers Bill") would have regulated development near rivers and streams, and would have potentially affected the Sears Building Project. The Rivers Bill was never enacted.
6. Beginning in 1993, Cataldo was also a member of the board of directors of Mediplex. From time to time, Cataldo contacted public officials, including Massachusetts legislators, on behalf of his own and Gosman's business interests. In 1992, Gosman asked Cataldo to participate in the leasing and permitting for the Sears Building project. Gosman promised Cataldo some share of the profits if that project were successful.

7. Charles F. Flaherty, Jr. ("Flaherty") has served in the House of Representatives ("House") of the Legislature from January 1965 to the present. During that time, Flaherty served as the chairman of the Committee on Counties (1971-1982); chairman of the Committee on Taxation (1983); and Majority Leader (1985-1990). In 1991, Flaherty was elected Speaker of the House and he is currently serving his third term in that office.

8. As a state representative and as Speaker, Flaherty participates, by speech and debate, by voting and by other means, in the process by which laws are enacted in the Commonwealth. As Speaker, Flaherty presides over the House, manages and administers the business organization of the House and recommends to the Democratic caucus for their ratification all majority party leadership and committee assignments. Thus, as Speaker, Flaherty has and exercises considerable influence and control over the House, both as to legislative and administrative matters.

9. During the period here relevant, Gosman owned a luxury, top floor, five bedroom condominium in Newport, Rhode Island. Gosman from time to time allowed some of his family members, employees and friends to use the Newport condominium without charge.

10. In or about April 1991, Cataldo offered Flaherty use of Gosman's Newport condominium. In or about April 1991, Cataldo informed Gosman that he had invited Flaherty to stay at the Newport condominium.

11. Cataldo and Flaherty were friendly, but were not close personal friends.

12. There is evidence to indicate that Cataldo provided Flaherty and his personal guests with the use of the Newport condominium a total of five times, on the following dates:

- a. April 12-14, 1991;
- b. July 8-9, 1991;
- c. December 8-9, 1991;
- d. February 22-23, 1992; and
- e. July 17-26, 1992.

13. Neither Gosman nor Cataldo was present when Flaherty used the Newport condominium. The only people present at the Gosman condominium were Flaherty's guests.

14. The value of Flaherty's and his guests' use of the Gosman Newport condominium was approximately \$7,000. Flaherty did not pay anything for the use of the Gosman condominium.

15. Section 3(a) of G.L. c. 268A, the conflict of interest law, prohibits anyone from giving to a state employee, directly or indirectly, anything of substantial value for or because of any official act performed or to be performed by him.

16. Massachusetts legislators are state employees.

17. Anything worth \$50 or more is of substantial value for G.L. c. 268A, §3 purposes.<sup>1/</sup>

18. By providing Flaherty with the use of the Newport condominium on five occasions in 1991 and 1992 valued at \$7,000, while Flaherty had been, was or soon would be in a position as Speaker to take official actions on matters affecting his own and Gosman's business interests, Cataldo gave items of substantial value to Flaherty for or because of an official act or acts performed or to be performed by Flaherty. In doing so, Cataldo violated §3(a).<sup>2/</sup>

19. The Commission is aware of no evidence that Flaherty was ever asked to take or took any official action concerning any proposed legislation which would affect the financial interests of Gosman or Cataldo or their businesses in return for the gratuities as described above.<sup>3/</sup> However, even if the gratuities were intended only to foster official goodwill and access, they were still impermissible.<sup>4/</sup>

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would best be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Cataldo:

(1) that Cataldo pay to the Commission the total sum of seven thousand five hundred dollars (\$7,500) as a civil penalty for violating G.L. c. 268A, §3(a), and

(2) that Cataldo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: March 28, 1996**

<sup>1/</sup> See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); EC-COI-93-14.

<sup>2/</sup> In determining whether the items of substantial value have been given for or because of official acts or acts within one's official responsibility, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Commission Advisory No. 8: Free Passes* (issued May 14, 1985):

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

<sup>3/</sup> As discussed in footnote 2, §3 of G.L. c. 268A, is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribery section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no evidence of such a *quid pro quo* between Cataldo and Flaherty.

<sup>4/</sup> Section 3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free days's outing (a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner), worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors). This rule of law was clearly stated in Flaherty's 1990 Disposition Agreement with the Commission. *In re Flaherty*, 1991 SEC 498.